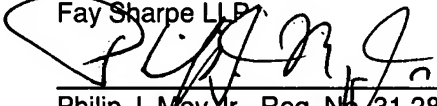
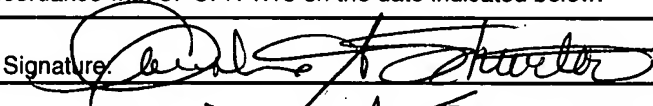


Doc Code: PTO/USPTO/RE REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket No.: HWKP-2-00008-US
Application No.: 10/501,297		Filed: July 12, 2004
Title: Tool Rig for Compaction of Particulate Material		
First Named Inventor: Gerd Hinzmann		
Art Unit: 1722		Examiner: Nguyen, Thukhanh T.
<p>Applicant(s) request(s) review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). <i>Note: No more than five (5) pages may be provided.</i></p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.</p> <p>Date: Dec. 11, 2007</p> <p>Respectfully submitted, Fay Sharpe LLP  Philip J. Moy Jr., Reg. No. 31,280 1100 Superior Avenue Seventh Floor Cleveland, OH 44114-2579 216-861-5582</p> <p>NOTE: Signature(s) of all the inventor(s) or assignee(s) of record of the entire interest or their representative(s) is/are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<input type="checkbox"/> *Total of forms are submitted.		
CERTIFICATE OF MAILING OR TRANSMISSION		
<p>I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being</p> <p><input checked="" type="checkbox"/> deposited with the United States Postal Service as First Class Mail, addressed to: Mail Stop None, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.</p> <p><input type="checkbox"/> transmitted to the USPTO by facsimile in accordance with 37 CFR 1.18 on the date indicated below.</p>		
Express Mail Label No.:		Signature: 
Date: December 11, 2007		Name: CAROLINE A. SCHWETER

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Office, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Action mailed June 15, 2007, applicant requests review of the final rejection of claims 1-29. No amendments are being filed with this request.

In the Office Action of June 15, 2007, the Examiner rejected all twenty-nine claims as being unpatentable in view of certain prior art. Specifically, (a) claims 1-8 and 13-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,971,548 (Asai '548); (b) claims 9 and 19 were rejected under 35 U.S.C. § 103(a) as being obvious in view of Asai '548 and U.S. Patent No. 6,486,449 (Fujikawa); (c) claims 10-12 and 20-22 were rejected under § 103(a) as being obvious in view of Asai '548 and U.S. Patent No. 5,320,517 (Hirata); and (d) claims 23-29 were rejected under § 103(a) as being obvious in view of Asai '548 and U.S. Patent No. 4,772,196 (Asai '196). All of the rejections are based on the Examiner's contention that Asai '548 discloses the basic elements of the claimed invention. A review of Asai '548, however, reveals that its disclosure is fundamentally different from the tool rig defined by the rejected claims.

For convenience, independent claim 1 of the application is reproduced below (emphasis added):

1. A tool rig for the compaction of particulate materials, comprising:

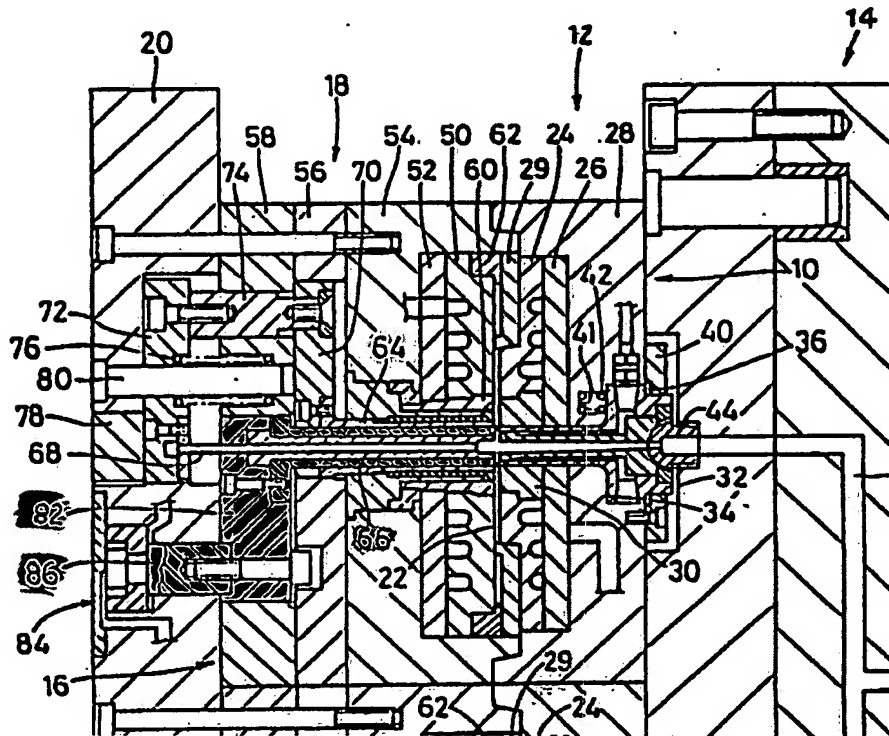
a base;

a cylinder block disposed on the base;

first and second pistons disposed within the cylinder block, the second piston being at least partially disposed within the first piston; and

first and second supply means for connecting an energy supply to the second piston *from positions within the second piston* to cause the second piston to move independently from movement of the first piston, the first supply means causing the second piston to move in a first direction and the second supply means causing the second piston to move in a second direction opposite the first direction.

The Examiner contends that Asai '548 discloses a tool rig including concentric first and second pistons in the form of ejector sleeve 64 and punch 66, respectively. A portion of Fig. 1 of Asai '548 has been reproduced here with the ejector sleeve 64 shown in yellow and the punch 66



in red. Conceding for the sake of argument that ejector sleeve 64 and punch 66 are concentric pistons of the type defined by the claims, Asai '548 fails to provide any disclosure or suggestion of the claimed first and second supply means that connect

an energy supply to the punch *from positions within the punch*. Instead, as described at column 4, lines 7-12 of Asai '548 and as shown here, movement of punch 66 (red) is accomplished by its connection to a punch supporting plate 82 (blue), which in turn is connected to a piston rod 86 (also blue) actuated by hydraulic cylinder 84. Accordingly, the only supply means disclosed in Asai '548 would be the supply of hydraulic fluid to hydraulic cylinder 84, which is located well outside the second piston/punch 66.

In independent claims 2-6, the first and second supply means are defined as first and second channels. Asai '548 does not even contemplate such channels for connecting hydraulic fluid or any other energy supply for punch 66 from positions within the punch.

Independent claim 13 is similar to claim 1, except that the first and second supply means recited in claim 1 are replaced by "a supply component *disposed in the second piston*" that defines two channels for providing an energy supply to the second piston (emphasis added). Asai '548 provides no disclosure or suggestion of the claimed supply component disposed in the

punch 66. As stated above, movement of the punch 66 is provided by punch supporting plate 82, piston rod 86, and hydraulic cylinder 84, all disposed well outside the area encompassed by the punch.

Independent claim 23 recites a press comprising a frame in combination with a tool rig as recited in claim 1. Asai '548 provides no disclosure or suggestion of the claimed arrangement.

The absence from Asai '548 of any supply means or component that would render independent claims 1, 13, and 23 unpatentable is clearly demonstrated by the Examiner's identification of hydraulic cylinder 84 and spring 76 as the supply means for the inner piston/punch of Asai '548. Those components are so far removed from inner piston/punch 66 that they could be termed "remote." Indeed, the configuration of the tool disclosed by Asai '548 must be seen as teaching away from applicant's claimed invention. As all of the independent claims are patentable in view of the applied prior art, all dependent claims are patentable as well.

The Final Office Action differed from the initial Office Action of September 18, 2006 in one curious respect. In the earlier Office Action, the Examiner cited only to column 5, lines 12-24 in referencing the alleged energy supply means of Asai '548. In the Final Office Action, he also cited to column 2, lines 42-60. Applicant is at a loss to understand how the cited language in column 2 of Asai '548 relates to the invention claimed in the application at issue.

The rejections of claims 1-29 based on Asai '548 cannot withstand scrutiny of the disclosure of the cited reference. Asai '548 provides no hint of a tool rig having two concentric pistons disposed within a cylinder block, in which an energy supply for moving the inner piston in both directions is disposed within the inner piston, as is set forth in the claims at issue. Accordingly, claims 1-29 should be allowed upon review.